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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,709	06/19/2001	Timothy L. Timmerman SR.		4077

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EXAMINER

HORTON, YVONNE MICHELE

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 09/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/884,709

Applicant(s)
Timothy L. Zimmerman, Sr.

Examiner
YVONNE M. HORTON

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jul 14, 2003
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-11 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Jul 14, 2003 is/are a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Request for Continued Examination

1. The request filed on for an RCE under 37 CFR 1.114 based on parent Application No. 09/884,709 is acceptable and an RCE has been established. An action on the RCE follows.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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3. The claims stand rejected under the judicially created doctrine of double patenting over the claims of U. S. Patent No. 6,158,184, as listed below, since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows:

A rigid rectangular structural panel having a plurality of attachment points, a plurality of foundation bolts, a foundation template, and a means for attaching the structural panel hold down points to the foundation bolts.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent.

The Instant Application

US Patent #6,158,184

1	1
2	1
3	1
4	1,2
5	1
6	5
7	5
9-11	1,4

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Claims 1-4,6 and 7 stand rejected over US Patent #6,158,184 to TIMMERMAN, Sr. et al. TIMMERMAN, Sr. et al. Teaches that it is known in the art to a rigid panel including a plurality of holdown attachment points, a plurality of foundation bolts, a foundation placement template, and a means for attaching the structural panel hold down points to the foundation bolts. Regarding claim 2, the means for attaching includes a plurality of holdowns. In reference to claim 3, the rigid panel is rectangularly shaped and includes two vertical side members connected to two or more horizontal members to form an opening, a plurality of attachment points, and one or more lateral resisting members. Regarding claim 4, the one or more lateral resisting members are horizontal spacers forming subopenings wherein the subopenings are covered by panels at vertical joints. In reference to claims 6 and 7, TIMMERMAN, Sr. et al. further teaches the use of a plurality of rectangular panels attached to the vertical members by fasteners.

Claim 5 stands rejected over US #6,158,184 to TIMMERMAN, Sr. et al. in view of US #5,706,626 to MUELLER. As detailed above, TIMMERMAN, Sr. et al. teaches the basic claimed apparatus except for forming the lateral force resisting members from metal. MUELLER teaches that it is known in the art to form the rigid structure out of a metal material, column 2, line 59, and specifically teaches forming lateral force resisting members out of metal.. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the system of US #6,158,184 out of a metal material, as taught by US #5,706,626 in order to create a stronger apparatus that will have greater resistance to buckling and bending under applied forces.

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Claims 9-11 stand rejected over US #6,158,184 to TIMMERMAN, Sr. et al. in view of US #5,706,626 to MUELLER. TIMMERMAN teaches the basic claimed apparatus except for explicitly detailing load points and a pattern therefore. MUELLER teaches that it is known in the art to apply a force at certain locations. This location would hereby be a load point. Although US #5,706,626 only shows two of these particular points, it would have been obvious to one having ordinary skill in the art at the time the invention was made that a load could be applied at any or various points about and throughout the structure in various patterns. Thus the pattern of load points is a design characteristic that depends upon the material used to form the apparatus, the environment in which the device is to be used, and the type of load being applied thereon.

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-7 and 9 stand rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #5,706,626 to MUELLER. MUELLER discloses a rigid panel (100) including a plurality of holdown attachment points (132), a plurality of foundation bolts (166,172), a foundation placement template (106), a means (134) for attaching the structural panel hold down points to the foundation bolts, and a plurality of load points (unlabeled) distributed throughout a plurality of lateral force resisting members (140), column 9, lines 5-8. Due to the fact that lateral members (140) resist force, inherently, load points are located throughout/therealong to reduce the tendency of buckling. Further, load points are facilitated at the point of intersection between the top member (104) and posts (1-2a,b) and the bottom member (106) and the posts (102a,b).

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When a force (182,184) is applied at any point on a member or at the intersection of two or more members, a “load point” is defined by the “load” being applied thereon via the force. Forces apply loads. Regarding claim 2, the means for attaching includes a plurality of holdowns (130).

In reference to claim 3, the rigid panel is rectangularly shaped and includes two vertical side members (102a,b) connected to two or more horizontal members (104,106) to form an opening (outlined red), see the marked attachment, a plurality of attachment points (132), and, as noted earlier, a plurality of load points (unlabeled) distributed throughout one or more lateral resisting members (140). Due to the fact that lateral members (140) resist force, inherently, load points are located throughout/therealong to reduce the tendency of buckling, column 9, lines 5-8.

Regarding claim 4, the one or more lateral resisting members (140) are horizontal spacers forming subopenings (outlined blue), see the marked attachment, wherein the subopenings are covered by panels (110a,b) at vertical joints. In reference to claim 5, the lateral force resisting member (140) is metal, column 2, line 59. Regarding claim 6, the panels (110) include a plurality of panels (110a,110b). In reference to claim 7, the panels are attached using a plurality of fasteners (124). In reference to claim 9, the structure of MUELLER includes a plurality of load (182,184) applied to the apparatus; wherein the loads (182,182) inherently create a linear pattern of load points (unlabeled) along the lateral force resisting members (140) because the force appears to be applied normal thereto. Force applied normally to a structure at a desired location is distributed linearly throughout.

Claim Rejections - 35 USC § 103

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6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claim 10 is and claim 11 stands rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,706,626 to MUELLER. As detailed above, MUELLER discloses the basic claimed panel except for an indication of the load points including specifically a linear pattern or a parallel linear pattern. Although MUELLER does not specifically detail load points distributed in a linear pattern or a parallel linear pattern, he does teach the use of loads applied linearly at a top portion of the panel. It would have been obvious to one having ordinary skill in the art at the time the invention was made that a load could be applied at any or various points about the structure. The resulting pattern of load points depends upon the material used to form the apparatus, the environment in which the device is to be used, the type of load being applied, and the angle at which the load is applied thereon. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the loads applied to MUELLER could be distributed throughout and thereabout forming any number of patterns including linear and parallel linear pattern. Linear patterns are most likely the result of more evenly disposed loads and other patterns are more likely the result of more unevenly applied loads.

Response to Arguments

8. Applicant's arguments filed 12/17/02 have been fully considered but they are not persuasive because although MUELLER does not explicitly discuss load points, he does detail that his lateral members (140) reduce the tendency of the panel to buckle under an applied load. In a general sense, and without any associated structure, "ductility" is the ability of a member to

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be easily shaped or molded. Also, a load applied at any location is distributed throughout at various points thereby being designated as "load points. Hence, MUELLER inherently details the use of load points by his explicitly detail of a force resisting member and a force being applied to the panel.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the load points causing the material surrounding the load points to absorb lateral loading and deform) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding the applicant's argument that the examiner referenced two load points, the action never references any element number associated with load points; however, the action does detail a discussion of the inherency of load point from the force being applied in MUELLER.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909.

YMH

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September 5, 2003

